

MEMORANDUM

FROM: Christopher E. Bergin, Jr.
Assistant Attorney General

DATE: March 29, 2022

RE: Review of Amendments to Regulations — 9 Va. Admin. Code § 25-194 *et seq.*

Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.

The State Water Control Board (“Board”) has proposed to amend 9 Va. Admin. Code § 25-194 *et seq.*

The Board has the authority to amend its regulations. *See* Va. Code § 62.1-44.15(10) (conferring the Board with the authority to, among other things, promulgate regulations “necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth.”).

After reviewing the proposed amendments, it is my opinion that the Board has the authority to adopt the proposed regulatory amendments contained in 9 Va. Admin. Code § 25-194 *et seq.*

Furthermore, the amended regulations reissue a general permit pursuant to the State Water Control Law (Va. Code § 62.1-44.2 *et seq.*). It is my view that the Board has: (i) provided a Notice of Intended Regulatory Action (“NOIRA”) in conformance with the provisions of § 2.2-4007.01; (ii) 30 days after providing that NOIRA, formed a technical advisory committee composed relevant stakeholders, (iii) provided notice and received oral and written comment as provided by § 2.2-4007.03, and (iv) has conducted a public hearing on the proposed general permit. Therefore, in my view, the proposed amendments are exempt from the requirements of Article II of the Administrative Process Act under Va. Code § 2.2-4006(A)(8).

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.